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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 403

HENRY RAGONTON RABANG, PETITIONER

v.

JOHN P. BOYD, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Court of Appeals (R. 46–48) is reported at 234 F. 2d 904.

JURISDICTION

The judgment of the Court of Appeals was entered June 14, 1956 (R. 49). The petition for a writ of certiorari was filed September 10, 1956, and was granted on November 13, 1956 (R. 49; 352 U. S. 906). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner, a Filipino who entered the United States in 1930 as a national, could be deported,

under a 1931 statute providing for the deportation of "any alien" thereafter convicted of a narcotics violation, on the basis of such a conviction in 1951, subsequent to Philippine independence.

2. Whether a Filipino who has resided in the United States since he entered as a national in 1930 could validly be treated as an alien after Philippine independence in 1946.

STATUTES INVOLVED

The Act of February 18, 1931, 46 Stat. 1171, as amended by the Act of June 28, 1940, 54 Stat. 673, 8 U. S. C. (1946 ed.) 156a, provided:

> Any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this Act) who, after February 18, 1931, shall be convicted for violation of or conspiracy to violate any statute of the United States or of any State, Territory, possession, or of the District of Columbia taxing, prohibiting, or regulating the manufacture, production compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt, derivative, or preparation of opium or coca leaves, shall be taken into custody and deported in the manner provided in sections 19 and 20 of the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States."

Section 19 (a) of the Immigration Act of February 5, 1917, 39 Stat. 889, c. 29, as amended (8 U. S. C. (1946 ed.) 155 (a)), provided:

At any time within five years after entry, any alien who at the time of entry was a member of one of more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter [after May 1, 1917] sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place

of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner of Immigration and Naturalization; or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Attorney General, be taken into custody and deported: * * * *Provided* * * * That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sen-

tence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Attorney General that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further,* That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further,* That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further,* That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Attorney General shall be final.

Section 20 of the Immigration Act of February 5, 1917, 39 Stat. 890, c. 29, as amended (8 U. S. C. (1946 ed.) 156), provided in pertinent part:

> The deportation of aliens provided for in this Act shall, at the option of the Attorney General, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such em-

barkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States. * * * If deportation proceedings are instituted at any time within five years after the entry of the alien, such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States, or, if that can not be done, then the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessels or transportation line by which such aliens respectively came, or, if that is not practicable, at the expense of the appropriation for the enforcement of this Act. If deportation proceedings are instituted later than five years after the entry of the alien, or, if the deportation is made by reason of causes arising subsequent to entry, the cost thereof shall be payable from the

appropriation for the enforcement of the Act. * * *

The Act of March 24, 1934, known as the "Philippine Independence Act", 48 Stat. 456, c, 84, provided in pertinent part:

> SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—
>
> (1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. * * *
>
> * * * * *
>
> SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

STATEMENT

Petitioner, who was born in the Philippine Islands in 1910, entered the United States as a national in 1930 and has since resided in this country (R. 19–20). Subsequent to Philippine independence, he did not

become a citizen of the United States. (R. 6.) On February 12, 1951, he was convicted of selling and giving away narcotics in violation of 26 U. S. C. 2554 (a). Six months sentence was imposed and suspended and he was placed on three years' probation (R. 38–40). On the basis of this conviction, he was ordered deported under the provisions of the Act of February 18, 1931, as amended, *supra,* p. 2 (R. 14–15).

Subsequently, in *Barber* v. *Gonzales,* 347 U. S. 637, this Court, dealing with a deportation under another act, *i. e.,* Section 19 (a) of the Immigration Act of 1917 (*supra,* pp. 2–5), held that entry from a foreign port or place was there essential to deportability and that Gonzales was not deportable since he entered the United States prior to the Philippine Independence Act of 1934 when the Philippine Islands were not a foreign place. The clause under which Gonzales had been ordered deported required deportation if an alien had been sentenced more than once for crimes involving moral turpitude "committed at any time after entry". On the basis of this decision, the acting regional commissioner of the Immigration and Naturalization Service requested the Board of Immigration Appeals to reconsider this case (R. 11–12). The Board declined to reopen the proceedings, distinguishing the statute pursuant to which petitioner was ordered deported from the statute involved in the *Gonzales* case, since the instant statute made no mention of "entry", and required only that the person to be deported be an alien convicted after February 18, 1931 (R. 8–10).

Petitioner thereafter instituted this action in the United States District Court for the Western District of Washington, attacking the deportation order on the grounds that (1) since he had made no entry into the United States, in the technical sense that entry is used in the immigration law, he was not subject to deportation, and (2) since he was a national of the United States residing in the United States at the time of Philippine Independence, he could not constitutionally be deprived of his United States nationality (R. 1–5).

The District Court dismissed the petition (R. 41–44), and the Court of Appeals affirmed (R. 46–49).

SUMMARY OF ARGUMENT

I

The Act of February 18, 1931 (8 U. S. C. (1946 ed.) 156a), *supra,* p. 2), provided for the deportation of an alien convicted of violating a narcotics law after the effective date of the statute. Petitioner was convicted of a narcotics violation in 1951 at a time when he was an alien, *i. e.,* a citizen of the Philippine Islands. His deportation was therefore required by the terms of the statute.

Entry as an alien is not, in terms, a prerequisite to deportability under the 1931 Act. The Act, which nowhere uses the term "entry," directs that deportation be had "in the *manner* provided in sections 19 and 20" of the Immigration Act of 1917 (emphasis added). Petitioner seizes upon this reference to the 1917 Act which, in certain limited respects, does refer to "entry," in an attempt to make entry into the

United States as an alien a condition precedent to deportability under the 1931 Act. In *Barber* v. *Gonzales,* 347 U. S. 637, this Court dealt with a direct application of Section 19 (a) of the Immigration Act of 1917, rather than the 1931 Act which incorporates only the "manner" of deportation under the 1917 Act. The holding in *Gonzales* related only to an attempt to deport under the specific provision of Section 19 (a) that an alien should be deported if sentenced for certain crimes "committed at any time after entry," and this Court decided only that entry, *where required as a condition of deportability,* must be entry from a foreign country rather than from the Philippine Islands in their status prior to independence. Petitioner, however, seeks to incorporate "entry," as construed in *Gonzales,* into the 1931 Act by reference to Section 20 and to another clause in Section 19 which uses the word "entry" in a context different from that in which it is used in Section 19 (a). These contentions have no merit.

A. With respect to Section 19 of the 1917 Act, petitioner relies on the proviso which states that "this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States" (*supra,* p. 5), arguing that this clause is encompassed in the "manner" of deportation referred to by the 1931 Act and means there must have been an "entry" within the terms of the latter Act. But this contention is foreclosed by *Bugajewitz* v. *Adams,* 228 U. S. 585, in which this Court held that a statute providing for deportation "in the manner pro-

vided" in another statute cannot be controlled by an express limitation in the incorporated statute and that the reference to "manner" relates only to the procedure for securing deportation. Section 19 of the 1917 Act provides that the variously described aliens "shall, upon the warrant of the Attorney General, be taken into custody and deported" and that, where another statute designates the place to which they shall be deported, aliens "shall be deported to the place specified in such other law." This is the *manner* of deportation referred to in the 1931 Act.

B. Even assuming petitioner's premise that the proviso to Section 19 does involve the "manner" of deportation, it is not incorporated by reference into the 1931 Act. The provision for the deportation of aliens "with the exceptions hereinbefore noted * * * irrespective of the time of their entry" concerns only those aliens described in the prior clauses of Section 19 whose deportability is not contingent upon a time limitation. The "exceptions," of course, are the prior clauses which specifically include words of time. *Costanzo* v. *Tillinghast*, 287 U. S. 341, 344–345. The Act of 1931 is governed by its own time-limitation clause—*i. e.*, any time "after February 18, 1931." Therefore, the phrase in Section 19, "irrespective of the time of their entry," would, in any event, be inapplicable and "entry" could not be read into the 1931 Act by this means.

C. Nor does reference in the 1931 Act to the manner of deportation in Section 20 of the 1917 Act make "entry" a condition precedent to deportability. Section 20 deals only with the ports to which an

alien can be deported and the details relative to expense of deportation. It imposes no limitation on deportability. When any variant of the word "enter" is used therein, it is used in a different context than in Section 19, which enumerates *causes* for deportation and not the actual *manner* or mechanical *means* of securing deportation. However, as observed *supra,* even if Section 20 were considered as imposing a limitation on deportability by virtue of the mere fact that the word "entered" is used therein, we believe petitioner's argument here is also foreclosed by *Bugajewitz* v. *Adams,* 228 U. S. 585, *supra.* Since the 1931 Act referred to deportation "in the manner provided" in Section 20, it cannot be controlled by other limitations in Section 20 directed, not to "manner," but to substantive bases of deportation.

Moreover, Congress used the word "entry" throughout Section 20 in its common, ordinary sense of "coming into" a place, rather than in the limited sense of "coming into the United States from some foreign port or place," which was the definition given the word "entry" as used in Section 19 (a) of the 1917 Act by *Barber* v. *Gonzales,* 347 U. S. 637. In Section 20, Congress referred to aliens entering "foreign contiguous territory from the United States" and to "entering the country from which they entered the United States" (*supra,* p. 6). "Entry" obviously could not mean "coming into the United States from some foreign port or place" in the phrase of Section 20 referring to entry "from the United

States." Thus, "entry" must have been used in its common, everyday meaning in Section 20 for there is no indication that it was not to be accorded the same meaning throughout that section. It is therefore submitted that the construction placed by the *Gonzales* case upon the word "entry", as used in Section 19 (a), cannot be extended to cover the meaning of the word "entry" as used in Section 20.

D. The legislative history of the 1931 Act reveals that Congress required only the conviction of an alien for a narcotics offense after February 18, 1931 (the effective date of the statute) as a requisite for deportation. H. Rep. No. 1373, 71st Cong., 2nd Sess.; S. Rep. No. 1443, 71st Cong., 3rd Sess.; *Ow Tai Jung* v. *Haff*, 89 F. 2d 329, 331 (C. A. 9).

E. Contrary to petitioner's contention (Pet. Br. 16–20), entry as an alien is not a condition precedent to deportability in the absence of statutory provision. The power to deport, like the power to exclude, is an attribute of sovereignty which the United States possesses in its capacity as a sovereign nation. *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 587–588; *Carlson* v. *Landon*, 342 U. S. 524, 534. An alien has no constitutional right to remain here. Therefore, aliens found presently undesirable may be deported even though the acts which give rise to deportation were not grounds for exclusion at the time of entry or grounds for deportation at the time of commission. The *ex post facto* limitation in the federal constitution does not apply to deportation proceedings. *Marcello* v. *Bonds*, 349 U. S. 302, 314; *Galvan* v. *Press*, 347 U. S. 522, 531; *Harisiades* v. *Shaughnessy*, 342

U. S. 580, 595. The power to deport an undesirable alien depends upon alienage at the time of deportation and not upon prior "excludability" or upon prior "entry". *Eichenlaub* v. *Shaughnessy*, 338 U. S. 521.

II

A Filipino citizen who has continuously resided in this country since 1930, when he entered as a noncitizen national of the United States, is validly deportable as an alien. Such a person's status changed from that of a national of the United States to that of an alien when Philippine independence was proclaimed in 1946. The Philippine Independence Act of March 24, 1934, 48 Stat. 456, 464 (*supra*, p. 7); Presidential Proclamations Nos. 2695 and 2696, July 4, 1946, 11 F. R. 7517.

A. The Philippine Islands were ceded to the United States in 1898 by the Treaty of Paris, which provided that "the civil rights and political status of the native inhabitants * * * shall be determined by Congress" (30 Stat. 1754). Although Congress accorded the inhabitants of the Islands the protection of the United States (32 Stat. 691, 692; 39 Stat. 545, 546), it never declared them to be citizens of the United States as it has in the case of inhabitants of Puerto Rico (39 Stat. 951, 953). Inhabitants of the Islands born there subsequent to its cession to the United States therefore never acquired United States citizenship by birth pursuant to the Fourteenth Amendment. Indeed, except for a limited class, they were racially ineligible for citizenship until independence was achieved in 1946. 60 Stat. 416.

Being entitled to the full protection of the Government of the United States made Filipinos "nationals" of the United States, but there is no basis for petitioner's suggestion (Pet. Br. 22) that the incidents and permanence of non-citizen nationality are to be equated to those of citizenship. There is a broad distinction between a "national" and a "citizen." The term "nationality" has reference to the position of a person from the standpoint of international law. Every person permanently attached to a state is a "national" of that state, whatever may be his particular rights and duties with regard to the state. These are dependent upon the constitution and the laws of the state. "Nationality" does not necessarily involve the right or privilege of participating in civil or political functions and is a more inclusive term than citizenship.

A non-citizen national has no constitutionally protected right to enter and remain in the continental United States. That right is appurtenant only to citizenship, and a national therefore has no more constitutional right to enter and remain here than an alien. Thus, even if petitioner were correct in his contention (Pet. Br. 21) that his status as a non-citizen national could not be terminated except by his consent or voluntary act, it would not follow that, as a national, he must be permitted to remain in the United States.

Moreover, it is clear that petitioner's status as a noncitizen national was subject to modification or termination by Congress. If he could not lose the status of a non-citizen national except by a voluntary

act of renunciation or expatriation, although he had become a citizen of the Republic of the Philippines, an independent foreign state, he would enjoy dual nationality. Congress has exercised its plenary power to prescribe the status of the inhabitants of territory not incorporated into the United States and, indeed of citizens, to eliminate just such problems as dual nationality. See, e. g., *Kawakita* v. *United States*, 343 U. S. 717; *Mackenzie* v. *Hare*, 239 U. S. 299; *Savorgnan* v. *United States*, 338 U. S. 491.

Nor is petitioner's position aided by virtue of the fact that, as a national, he owed "permanent allegiance" to the United States (Pet. Br. 21–22). "Permanent allegiance" does not mean an unbreakable bond, but merely distinguishes the unqualified allegiance owed by a national from the temporary, limited allegiance owed to the United States by an alien who is only temporarily in the United States and who owes his "permanent" allegiance to the country of which he is a national. *United States* v. *Wong Kim Ark*, 169 U. S. 649, 657; *Carlisle* v. *United States*, 16 Wall. 147, 154.

B. It is not necessary to decide here what petitioner's right as a non-citizen national would be if the Philippine Island had remained under the control of the United States indefinitely. The United States of course had power to provide for Philippine independence, and, incident to that power, Congress could change the status of non-citizen Filipino nationals of the United States residing both in the Philippines and in this country. *Hooven & Allison Co.* v. *Evatt*,

324 U. S. 652, 675–678; see also *Cincinnati Soap Co.* v. *United States,* 301 U. S. 308, 319–320, 322–324.

The question of the power of Congress to provide for the termination of the non-citizen nationality of persons who thereby will be rendered stateless is not involved here. Congress, by the Act of July 2, 1946 (60 Stat. 416), made "Filipino persons" eligible for naturalization as American citizens, and thereby in effect provided, simultaneously with petitioner's loss of his status as a non-citizen national, that persons in his position could remain citizens of the Republic of the Philippines or become citizens of the United States.

C. Sections 8 (a) and 14 of the Philippine Independence Act of 1934 made citizens of the Philippine Islands subject to deportation for causes arising after May 1, 1934, regardless of when they came to this country. They are to be treated as aliens for purposes of the immigration laws, and no statutory exception was made for Filipinos residing in the United States. Section 8 (a) provided that "For the purposes of the Immigration Act of 1917, * * * and all other laws of the United States relating to the * * * expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens." Section 14 provided that, upon complete independence of the Philippines, "the immigration laws of the United States * * * shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries."

Section 8 (a) was headed "Relations with the United States Pending Complete Independence," and

was therefore in effect from 1934 until 1946, when complete independence was attained. Since petitioner was convicted in 1951, Section 8 (a) has no direct relevancy to the problems of this case, but it does give added weight to the legislative intent behind Section 14 of the Act. If a Filipino national was deportable as an alien from 1934 to 1946 under Section 8 (a)—and the legislative history and contemporaneous interpretation of Section 8 (a) support this conclusion—he obviously did not cease to be so deportable when the Republic of the Philippines became an independent nation in 1946.

However, any doubts as to the effect of the Philippine Independence Act on Filipinos residing in the United States is resolved by Section 14 of the Act, which is controlling here and which explicitly applies to "persons who were born in the Philippine Islands." In 1946, petitioner clearly ceased to be a national of the United States and became an alien for all purposes.

ARGUMENT

I. Entry as an alien is not a condition precedent to deportability for a narcotics conviction under the Act of February 18, 1931

The Act of February 18, 1931 (*supra*, p. 2) provided that an alien convicted of violating a narcotics law after the effective date of the statute "shall be taken into custody and deported in the *manner* provided in sections 19 and 20" of the Immigration Act of 1917 (emphasis added). The word "entry" did not appear in the statute. Petitioner was ordered deported for a narcotics violation committed in 1951;

after the effective date of the statute and at a time when he was an alien. Our position is that his deportation was therefore required by the statute regardless of his status at the time he came to the continental United States.

A. *The reference in the 1931 Act to the "manner" of deportation in Section 19 of the 1917 Immigration Act did not make entry as an alien a condition precedent to deportability for a narcotics conviction after 1931.*

Petitioner attempts to make "entry" a condition precedent to deportability under the 1931 Act because of the reference therein to deportation "in the manner provided in sections 19 and 20" of the Immigration Act of 1917. (Pet. Br. 8–14.) He relies on the clause in Section 19 of the 1917 Act which stated that the provisions of "this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States," arguing that this means there must have been a prior "entry" to make the alien deportable.[1]

Petitioner's argument, however, is foreclosed by the decision of this Court in *Bugajewitz* v. *Adams,* 228 U. S. 585. There, deportation proceedings for practicing prostitution were brought against an alien under Section 2 of the Act of March 26, 1910 (36 Stat. 263, 265), which ordered deportation "in the manner

[1] Petitioner bases a like contention (Pet. Br. 15) on the fact that Section 20, in discussing the details with respect to deportation expenses, distinguishes between proceedings instituted "within five years after the entry of the alien" and those "instituted later than five years after the entry of the alien."

provided by" Sections 20 and 21 of the Act of February 20, 1907 (34 Stat. 904). Sections 20 and 21 directed, *inter alia,* that aliens subject to removal be taken into custody within three years from entry. This Court held that there was a distinction between the words "as provided" and "in the manner provided"; that a statute employing the former phrase may be controlled by an express limitation in the incorporated statute but a statute containing the latter was not so controlled. In ruling that the three year limitation did not apply, the Court made clear that "in the manner provided" referred only to the procedure for securing deportation. *Bugajewitz* v. *Adams, supra,* at p. 591. So here, if Congress, in enacting the 1931 Act, had wished to make deportation dependent upon the conditions in Section 19 of the 1917 Act, it would have said "as provided" or "under the conditions specified" in Sections 19 and 20. Rather, it used the phrase which had already been given content by this Court as referring only to procedure, *i. e.,* "in the manner provided" by Sections 19 and 20.[2]

Other unsuccessful attempts have been made to restrict the application of the 1931 Act by incorporating into it various conditions found in Section 19. In *Ianni* v. *Harris,* 111 F. 2d 833 (C. A. 5), an alien ordered deported under the 1931 Act contended that

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[2] As noted *infra* at pp. 22, 23–25, this reference to Sections 19 and 20 controls the "manner" in which aliens shall be taken into custody, *i. e.,* upon the warrant of the Attorney General (Section 19) and the places to which they shall be deported (Sections 19 and 20).

he was not deportable because his conviction had occurred more than five years after his entry into the United States. He relied on the limitation "within five years after entry" contained in the first clause of Section 19. The court held that the later enactment incorporated the provisions of Section 19 and 20 relating to the manner of deportation, but that the five year limitation period in Section 19 did not so relate.

Similarly, in *United States ex rel. Magri* v. *Wixon*, 53 F. 2d 475 (S. D. N. Y.), an alien ordered deported under the 1931 Act argued that, because of the reference in that Act to Sections 19 and 20, there could be no lawful deportation except for a cause and under conditions specified in Sections 19 and 20. The court stated on page 476:

> * * * So to construe the new statute would nullify it. It is therein expressly provided that the "manner" of the deportation shall be in accord with the provisions of the older statute. Sections 19 and 20 of the 1917 Act (8 U. S. C. §§ 155, 156) prescribe what the manner of a deportation thereunder shall be. It is only to the extent of the manner thereby prescribed that the 1931 act requires that they be complied with.

It is true that these cases did not deal with the question whether the "entry" of the alien was required, but concerned the time limitation measured from entry. However, it is manifest that, if the clause relating to the time limitation is not properly to be incorporated into the statute, neither is the word

"entry". All that is incorporated from Section 19 into the 1931 Act is the "manner" of deportation.[3]

B. *Even if the proviso of Section 19 of the 1917 Act were applicable, it would not make "entry" a condition precedent to deportation under the 1931 Act.*

We have just shown the error in petitioner's argument that the proviso in Section 19—that "the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States"—made "entry" a condition precedent to deportability.[4] But this argument is untenable even on petitioner's premise that this clause was incorporated into the 1931 Act. The only relevant limitation would still be that the conviction occur subsequent to the effective date of the Act, February 18, 1931.

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[3] Some courts have held that the proviso in Section 19 which provides for the inapplicability of the section to the deportation of aliens convicted of a crime involving moral turpitude when the sentencing judge recommends against deportation involves the "manner" of deportation within the meaning of the 1931 Act. Their reasoning is that sentence is an essential element of the deportation and therefore is a part of the "manner" of deportation. (Pet. Br. 12); *Dang Vam* v. *Bryan*, 74 F. 2d 379, 380 (C. A. 9). Before it was amended in 1940 the 1931 Act required that the alien be previously "convicted and sentenced". The words "and sentenced" were deleted by the amendment. See *Ex parte Eng*, 77 F. Supp. 74, 77 (N. D. Cal.), holding that sentence is nevertheless still part of the "manner" of deportation.

[4] It should be noted that the phrase "irrespective of the time of their entry" does not carry the same connotation as the "after entry" provision involved in *Barber* v. *Gonzales*, 347 U. S. 637. While the phrase "after entry" may be read as imposing a condition to deportability, the phrase "irrespective of the time of their entry" merely negates a time limitation.

Section 19 contained 12 subject clauses, each re-referring to variously described aliens as "any alien who * * *", etc. All of the subject clauses had as their predicate the clause, "shall, upon the warrant of the Attorney General, be taken into custody and deported". This is the "manner" of deportation referred to in the 1931 Act.[5] Following this predicate were several provisos, including the clause upon which petitioner relies.

Some of the subject clauses contained references to periods of time within which the described aliens could be deported: *e. g.*, "within three years after entry" for those entering without inspection; "within five years after entry" for a public charge. Others specified that the act on which deportation was to be based must have been committed "after entry"; *e. g.*, the anarchy clause, and the clause relating to crimes involving moral turpitude. Others, however, contained no reference to time or to entry: *e. g.*, "any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose." With respect to a similar clause dealing with managing a house of prostitution, this Court specifically held in *Costanzo* v. *Tillinghast*, 287 U. S. 341, 344–345, that the time limitations of the other sections did not apply. Referring to the proviso here involved, this Court noted that there "is nothing upon which this proviso may operate if such of the pre-

[5] Section 19 further provides that an alien arrested for a violation of any other law "shall be deported to the place specified in such other law". Section 20 of the 1917 Act, also referred to in the 1931 Act, designated the ports to which the alien was to be deported and the details relative to expense. See *infra*, pp. 24–26.

ceding clauses as contain no time limitation are qualified by the words of the first fixing the limitation at five years". The Court ruled that "each clause containing a time limitation" was to be "read separately as an exception to the general rule declared by the proviso". The proviso itself made that clear by making the provisions of the section applicable "with the exceptions hereinbefore noted". The exceptions, of course, were the prior clauses which specifically include words of time.

On this basis, even if the 1931 Act were read back into Section 19 of the 1917 Act, it would still be governed by its own time-limitation clause, and that time limit was that the conviction occur after February 18, 1931. Under *Costanzo* v. *Tillinghast, supra,* the proviso on which petitioner relies—with its phrase, "irrespective of the time of their entry"—would be inapplicable. "Entry" therefore cannot read into the 1931 Act as a condition precedent to deportability.

C. *The reference in the 1931 Act to the manner of deportation in Section 20 of the 1917 Act did not make "entry" a condition precedent to deportability.*

Petitioner contends, as he does with respect to Section 19, that Section 20 of the Act of 1917 made "entry" a condition precedent to deportation and that such limitation applied in this case because the 1931 Act also referred to Section 20 for the "manner" of deportation (Pet. Br. 14–16).

It should again be noted that Section 20 dealt only with the ports to which an alien could be deported and the details relative to expense. Unlike Section 19, which had time-limitation clauses, Section 20 im-

posed no limitation of any kind on deportability. Rather, its obvious purpose was to facilitate the actual mechanics of deportation. However, even if Section 20 did contain a limitation on deportability, we believe that, as was the case with respect to Section 19, petitioner's argument is also foreclosed by *Bugajewitz* v. *Adams,* 228 U. S. 585, in which this Court held that a statute providing for deportation "in the manner provided" in another statute cannot be controlled by an express limitation on deportability in the incorporated statute. *Supra,* pp. 19-20.

Moreover, a mere reading of the statute shows that Congress must have used the word "entry" in Section 20 in its common, everyday sense as meaning "coming in," rather than "coming into the United States from some foreign port or place," which was the construction this Court placed on the word "entry" as used in Section 19 (a) of the 1917 Act. *Barber* v. *Gonzales,* 347 U. S. 637. For in Section 20 of the 1917 Act (8 U. S. C. (1946 ed.) 156), in making specific provision for the place to which aliens shall be deported, it is stated that

> * * * if such aliens *entered foreign contiguous territory from the United States* and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refused to permit their *reentry,* or imposes any condition upon permitting *reentry,* then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior

> to *entering the country* from which they entered the United States. * * * [*supra,* p. 6; emphasis added.]

Manifestly, Congress could not have intended "entry" to have meant "entry from some foreign port or place" or "entry as an alien" when it used the word in referring both to entry into the United States and entry into a foreign country. It is submitted that the holding of the *Gonzales* case, *supra,* in regard to the meaning of the word "entry" in Section 19 (a) of the 1917 Act, cannot be extended to cover the meaning of the word "entry" as used in Section 20. If it were to receive such a construction, the phrase "entered foreign contiguous territory *from* the United States" (emphasis added) would be meaningless. It is apparent, therefore, that, regardless of its meaning in Section 19 (a) of the 1917 Act, in Section 20 "entry" is used merely to mean a "coming in", and therefore imposed no barrier to petitioner's deportation.

D. *The legislative history reveals that Congress required only the conviction of an alien for a narcotics offense after February 18, 1931, as a requisite for deportation under that Act.*

The reports on the bill (H. R. 3394, 71st Cong., 2d Sess.) which became the Act of 1931 reveal merely a purpose to deport all aliens who thereafter engaged in narcotics traffic (H. Rep. No. 1373, 71st Cong., 2d Sess.; S. Rep. No. 1443, 71st Cong., 3d Sess.), with an exception suggested on the floor of the House for addicts who were not peddlers or dealers (72 Cong. Rec. 10324, 12367, 12453).

S. Rep. No. 1443 stated:

> Deportation is a proper and effective weapon against aliens who violate our laws and relieves the United States from the cost of maintaining them in our already crowded jails.

This statement has been considered as expressing the congressional intent that the law not be restrictively interpreted. *Ow Tai Jung* v. *Haff*, 89 F. 2d 329, 331 (C. A. 9).

There is nothing in this history to show that Congress regarded as significant any fact other than the alienage which was necessary to support deportation, and the fact of conviction for trading in narcotics. Petitioner, as an alien convicted of trading in narcotics, falls within the plain language and clear intendment of the statute.

E. *Entry as an alien is not a condition precedent to deportability in the absence of specific statutory provision.*

Petitioner further contends that prior "entry" as an alien should be considered a requisite for deportation even in the absence of statutory provision because the power to exclude is essential to the power to deport (Pet. Br. 16–20). However, this challenge to the power of Congress to deport petitioner finds no support in constitutional theory or in the decided cases.[6]

The power to deport, like the power to exclude, is an attribute of sovereignty which the United States possesses in its capacity as a sovereign nation.

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[6] See pp. 29, 32, 37–38 *infra* for discussion of cases relating to the power of Congress to denationalize Filipinos at the time of the establishment of Philippine independence.

Harisiades v. *Shaughnessy,* 342 U. S. 580, 587–588; *Carlson* v. *Landon,* 342 U. S. 524, 534. Whatever may be the constitutional limitations on the exercise of that power in relation to aliens in this country, it has always been recognized that an alien has no constitutional right to remain here. For this reason, aliens found presently undesirable may be deported even though the acts which give rise to deportation were not grounds for exclusion at the time of entry or grounds for deportation at the time of commission, since the *ex post facto* limitation in the federal constitution does not apply to deportation proceedings. *Marcello* v. *Bonds,* 349 U. S. 302, 314; *Galvan* v. *Press,* 347 U. S. 522, 531; *Harisiades* v. *Shaughnessy,* 342 U. S. 580, 595. The controlling fact is the present undesirability of the alien in the view of Congress.

Petitioner's argument is sufficiently answered by the case of *Eichenlaub* v. *Shaughnessy,* 338 U. S. 521, where a naturalized citizen who had been convicted of espionage, and had his citizenship revoked, was ordered deported under the Act of May 10, 1920, 41 Stat. 593, which provided for the deportation of aliens convicted of espionage after 1914. Despite the fact that he was not an alien when the offense was committed or when he was convicted, this Court held him deportable under the Act as an undesirable resident. In so holding, the Court did *not* resort to the legal fiction that, since citizenship was revoked on the grounds of fraud in the procurement, naturalization was void *ab initio.* It held simply that petitioner, as an alien at the time of the deportation proceedings, was subject to deportation.

If the United States can declare a former naturalized citizen an alien and deport him, then certainly one, never a citizen, who has become an alien is subject to deportation. In short, the constitutional power to deport depends on alienage at the time of deportation regardless of prior status and regardless of whether there has been an "entry."

II. A Filipino citizen who has continuously resided in this country since 1930, when he entered as a non-citizen national of the United States, is validly deportable as an alien

Petitioner's contention (Pet. Br. 20–24), that Filipinos who were legal residents of the United States at the time of Philippine independence in 1946 (Presidential Proclamations Nos. 2695 and 2696, July 4, 1946, 11 F. R. 7517) did not lose their status as United States nationals and did not become aliens despite the clear wording of Section 14 of the Independence Act (*supra*, p. 7), has repeatedly been rejected by the court below. *Banez* v. *Boyd*, 236 F. 2d 934; *Resurreccion-Talavera* v. *Barber*, 231 F. 2d 524; *Gonzales* v. *Barber*, 207 F. 2d 398, affirmed on other grounds, 347 U. S. 637; *Mangaoang* v. *Boyd*, 205 F. 2d 553, certiorari denied, 346 U. S. 876; *Cabebe* v. *Acheson*, 183 F. 2d 795.[7] This Court did not reach this question in its decision in *Barber* v. *Gonzales*, 347 U. S. 637, and we therefore discuss under this point the intent and power of Congress to provide that, after Philippine independence, Filipino nationals should be aliens in relation to the United States.

[7] The question does not appear to have arisen in other circuits. Cf. *Gancy* v. *United States*, 149 F. 2d 788 (C. A. 8), certiorari denied, 326 U. S. 767.

A. Both the historical relationship between the Philippine Islands and the United States and the decisions of this Court make clear that the status of citizens of the Philippine Islands as nationals of the United States has been subject to modification or termination at any time by the Congress.

1. *The historical relationship of the Philippine Islands to the United States.* Following the war with Spain, the Philippine Islands were ceded to the United States by the Treaty of Paris of December 10, 1898 (30 Stat. 1754), which provided in Article IX that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." As this Court noted in *Balzac* v. *Porto Rico,* 258 U. S. 298, 306, "Few questions have been the subject of such discussion and dispute in our country as the status of our territory acquired from Spain in 1899." By the Act of July 1, 1902 (32 Stat. 691, 692), Congress declared that all inhabitants of the Philippine Islands continuing to reside there who were Spanish subjects on April 11, 1899, and their children subsequently born, shall "be citizens of the Philippine Islands and as such entitled to the protection of the United States * * *."[8] Later, in 1916, in Section 2 of the Jones Act (39 Stat. 545, 546), this provision of the 1902 Act governing the political status of the inhabitants of the Philippine Islands was repeated. The Act of April 12, 1900, 31 Stat. 77, 79, made a similar provision for the inhabitants

[8] Exception was made for those who elected to maintain their allegiance to Spain.

of Puerto Rico. However, in contrast with the Act of March 2, 1917, 39 Stat. 951, 953, which declared the inhabitants of Puerto Rico to be citizens of the United States, no act of Congress has ever declared the citizens or inhabitants of the Philippine Islands to be citizens of the United States.[9]

By the series of steps summarized in *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 674–676, the subsequent political history of the Philippine Islands has consisted of a steady increase in local self-government and a progressive withdrawal of United States rule. See the Philippine Independence Act of 1934 (48 Stat. 456) which, in addition to Sections 8 and 14, *supra*, p. 7, provided for the drafting of a constitution for the Philippine Islands (Sections 1–4), a partial subjection of the products of the Philippine Islands to American tariffs (Section 6),

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[9] The withholding of American citizenship from Filipinos is unique in our history. In every other case where new territory was ceded to the United States, provision was made for the eventual admission of the inhabitants thereof to United States citizenship. In the opinion for the Court in *Downes* v. *Bidwell*, 182 U. S. 244, 280, Mr. Justice Brown observed:

> In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that "the inhabitants shall be incorporated into the Union of the United States and admitted as soon as possible * * * to the enjoyment of all the rights * * *"; in the case of Mexico, that they should "be incorporated into the Union, and be admitted at the proper time, (to be judged of by the Congress of the United States,) to the enjoyment of all the rights of citizens of the United States"; in the case of Alaska, that the inhabitants who remained three years, "with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights," etc.; * * *.

and other steps toward complete independence—which was to take effect in ten years. Because of the intervention of World War II, however, the Philippine Islands did not become fully independent until 1946. Presidential Proclamations Nos. 2695 and 2696, July 4, 1946, 11 F. R. 7517.

2. *The constitutional status of the Philippine Islands and its inhabitants.* The essence of a series of decisions by this Court as to the relationship of the Philippine Islands to the United States was summarized in *Hooven & Allison Co.* v. *Evatt,* 324 U. S. 652, 673, 674–675, as follows:

> That our dependencies, acquired by cession as the result of our war with Spain, are territories belonging to, but not a part of, the Union of states under the Constitution, was long since established by a series of decisions in this Court beginning with *The Insular Tax Cases* in 1901; *De Lima* v. *Bidwell, supra; Dooley* v. *United States, supra,* 182 U. S. 222; *Downes* v. *Bidwell,* 182 U. S. 244; *Dooley* v. *United States,* 183 U. S. 151; and see also *Public Utility Commissioners* v. *Ynchausti & Co.,* 251 U. S. 401, 406–407; *Balzac* v. *Porto Rico,* [258 U. S. 298] * * *
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> The status of the Philippines as territory belonging to the United States, but not constitutionally united with it, has been maintained consistently in all the governmental relations between the Philippines and the United States. * * *

Since the Philippine Islands were at no time incorporated into the United States, persons born in the

Philippine Islands have not acquired United States citizenship by birth pursuant to the Fourteenth Amendment. Cf. *Elk* v. *Wilkins,* 112 U. S. 94; Burdick, *Law of the American Constitution* (1922) pp. 327–328.

As noted above, Congress in 1902 and again in 1916 declared the inhabitants of the Philippine Islands and their children subsequently born "to be citizens of the Philippine Islands and as such entitled to the protection of the United States." *Gonzales* v. *Williams,* 192 U. S. 1, 12–13, held that the native inhabitants of Puerto Rico, prior to the grant of United States citizenship to them in 1917, could not be excluded from this country under a general statute relating to the exclusion of "aliens." Emphasizing that it was not passing upon the power of Congress to provide for the exclusion of such persons, this Court concluded that the statute before it "relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof," rather than to "citizens of Porto Rico, whose permanent allegiance is due to the United States. * * *" Similarly, in *Toyota* v. *United States,* 268 U. S. 402, 411, it was said that "The citizens of the Philippine Islands are not aliens." However, the *Toyota* decision recognizes not only that citizens of the Philippine Islands are not citizens of the United States, but also that except for a limited class they were racially ineligible for citizenship. This ineligibility for naturalization continued until 1946 (60 Stat. 416; 8 U. S. C. 703).

The chief characteristic of the status of a non-citizen national of the United States is that, regardless of his rights and privileges in relation to the United States, his position in the eyes of other nations is substantially that of a citizen of the United States. He travels on an American passport and he receives American diplomatic protection while he is abroad. Conversely, his status under international law in no way governs his position within the territory of the United States.[10]

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[10] While citizens of the various dominions in the British Commonwealth have shared a common British nationality, that nationality was relevant only in relations with countries outside of the Commonwealth. Within the Commonwealth, such persons were not regarded as primarily British, but as citizens of their respective dominions, and when in other dominions they might be subject to deportation as aliens. See, e. g. *Ex parte Banta Singh*, (1938) 1 D. L. R. 789. The insignificance of the concept of "British nationality" within the British Commonwealth has been described as follows:

> * * * Within the Commonwealth a British subject is no more at liberty to roam from Dominion to Dominion than is an alien, in the strict sense of the word, at liberty to enter any part of the Commonwealth. *Nowhere indeed does the term "British subject" mean so little as it does within the British Commonwealth itself.* [Emphasis added.]

Fraser, *Control of Aliens in the British Commonwealth of Nations* (London, 1940) 28.

While Fraser notes that Great Britain, herself, has accorded equality of treatment to British subjects from all parts of the Empire, he adds that, "Her very remoteness from India freed the United Kingdom from the unpleasant necessity of herself enacting legislation aimed at Indians," (p. 31). This unmistakably implies that only considerations of legislative policy have prevented Great Britain from treating its non-citizen nationals as aliens. Thus, prior to enactment of new legislation on the subject in 1914, it was held, without dissent, that a naturalized citizen of Australia, who had taken an oath of allegiance to the king and

Thus, the inhabitants of the Philippine Islands, while admittedly not citizens of the United States, were entitled to the "protection of the United States" and owed "permanent allegiance" to the United States. This status has become known as that of a "national", as distinguished from a "citizen", or a "non-citizen national." Thus, the Harvard Law School, Research in International Law, draft convention on Nationality, contains the following comment (23 Am. J. Int. L. sp. supp., p. 23):

> The term "nationality" has reference to the position of a natural person from the standpoint of international law. Every person permanently attached to a state has its nationality, whatever may be his particular rights and duties with regard to the state. These are dependent upon the constitution and laws of the state. Nationality does not necessarily involve the right or privilege of exercising civil or political functions. *Minor* v. *Happersett* (1874), 21 Wallace 162. Thus nationality has a broader meaning than "citizenship," for which it is frequently used as a synonym. * * *
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> * * * Its use has become common in the United States since the acquisition of the Philippine Islands and other insular possessions having inhabitants who, though they have American nationality and are entitled to full protection abroad by the Government of the United States, have not the status of "citizens

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was entitled to British protection in foreign countries, was nonetheless an alien in Great Britain. *Ex parte Markwald*, [1918] 1 K. B. 617; *Markwald* v. *Attorney General*, [1920] 1 Ch. 348; see Wilson, *The Imperial Conference of 1937*, 32 Am. J. Int. Law 335, 337.

> of the United States," within the meaning of Article 14 of the Amendments to the Constitution.

This distinction between "national" and "citizen" was written into Section 101 of the Nationality Act of 1940 (54 Stat. 1137, 8 U. S. C. 501) as follows:

> (a) The term "national" means a person owing permanent allegiance to a state.
>
> (b) The term "national of the United States" means (1) a citizen of the United States or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien.

Congress was specifically aware that this distinction reflected the position of "the inhabitants of the various outlying possessions who owe permanent allegiance to the United States but have not the status of citizens of the United States." Hearings before the House Committee on Immigration and Naturalization on *Bills To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code*, 76th Cong., 1st Sess. (1940), p. 412. The distinction was carried forward in Section 101 (a) (21) and (22) of the Immigration and Nationality Act of 1952 in relation to Inhabitants of American Samoa and Swain's Island (66 Stat. 163, 169).

There is no basis for the petitioner's suggestion (Pet. Br. 22) that the incidents and permanence of non-citizen nationality are to be equated to those of citizenship. It cannot be contended that a non-citizen national lacks only the political rights of a citizen, such as the right to vote, since such political rights

do not necessarily attach to citizenship. *Minor* v. *Happersett,* 21 Wall. 162. What is involved here is whether a non-citizen national has a constitutionally protected right to enter and remain in the continental United States. That a citizen of the United States has such a right to enter and reside in the United States is beyond dispute. *Colgate* v. *Harvey,* 296 U. S. 404, 429; *Paul* v. *Virginia,* 8 Wall. 168, 180; *Crandall* v. *Nevada,* 6 Wall. 35, 44. But a non-citizen national does not enjoy such rights. Magoon, in 1900, following the Treaty of Paris, said that, "The inhabitants of the islands acquired by the United States during the late war with Spain, not being citizens of the United States, do not possess the right of free entry into the United States. That right is appurtenant to citizenship. The rights of immigration into the United States by the inhabitants of said islands are no more than those of aliens of the same race coming from foreign lands." *Magoon's Reports* (1902) p. 120. The implication that Congress is free under the Constitution to define the status of the inhabitants of territory acquired by the United States was confirmed by this Court in *Downes* v. *Bidwell,* 182 U. S. 244, 279–280, in the opinion of Mr. Justice Brown:

> We are also of opinion that the power to acquire territory by treaty implies not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their *status* shall be in what Chief Justice Marshall termed the "American Empire." There seems to be no middle ground between this position and the

> doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States, their children thereafter born, whether savages or civilized, are such, and entitled to all the rights, privileges and immunities of citizens. If such be their *status,* the consequences will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions and modes of life, shall become at once citizens of the United States.[11]

No principle of international law is inconsistent with this conclusion. 2 Hyde, *International Law* (rev. ed., 1945), at 1092.

As noted *supra* at p. 33, there is nothing to the contrary in the holding in *Gonzales* v. *Williams, supra.* Moreover, in *Balzac* v. *Porto Rico,* 258 U. S. 298, 308, in discussing the effect of the grant of United States citizenship to Puerto Ricans in 1917, this Court stated:

> * * * What additional rights did it give them? It enabled them to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political. A citizen of the Philippines

[11] On the proposition that it was not necessary to confer citizenship on the inhabitants of newly acquired territory, there was agreement among the several justices writing opinions. See opinion of Mr. Justice White, joined in by Justices Shiras and McKenna (182 U. S. at 306); and opinion of Mr. Chief Justice Fuller, joined in by Justices Harlan, Brewer, and Peckham (182 U. S. at 369).

> must be naturalized before he can settle and vote in this country. Act of June 29, 1906, c. 3592, § 30, 34 Stat. 606. Not so the Porto Rican under the Organic Act of 1917.

The clear implication of the quoted language is that non-citizen nationals have no constitutionally protected rights to enter or reside in the continental United States. Thus, even if petitioner were correct in his contention (Pet. Br. 21) that his status as a non-citizen national cannot be terminated except by his consent or voluntary act, it would not follow that he must be permitted to remain in the United States.

Moreover, it is clear that his entire status as a non-citizen national was subject to modification or termination by Congress. If petitioner cannot lose the status of a non-citizen national except by a voluntary act of renunciation or expatriation, although he has since become a citizen of the Republic of the Philippines, an independent foreign state, he would enjoy dual nationality. But a major purpose of our nationality laws is to eliminate just such problems of dual nationality. See, *e. g., Kawakita* v. *United States,* 343 U. S. 717; *Mackenzie* v. *Hare,* 239 U. S. 299; *Savorgnan* v. *United States,* 338 U. S. 491. It was to avoid such consequences that this Court, in *Downes* v. *Bidwell, supra,* pp. 37–38, recognized a plenary power in Congress to prescribe the status of the inhabitants of territory not incorporated into the United States.

Nor is petitioner's position aided by virtue of the fact that in the Nationality Act of 1940 and in Section 101 (a) (22) of the succeeding Immigration and Nationality Act of 1952, Congress defined "national

of the United States" as including "a person who, though not a citizen of the United States, owes permanent allegiance to the United States." (Pet. Br. 21–22). "Permanent allegiance" does not mean an unbreakable bond, but merely distinguishes the unqualified allegiance owed by a national from the temporary, limited allegiance owed to the United States by an alien who is only temporarily in the United States and who owes his "permanent" allegiance to the country of which he is a national. *United States* v. *Wong Kim Ark*, 169 U. S. 649, 657; *Carlisle* v. *United States*, 16 Wall. 147, 154.

There is no doubt that Congress so used the phrase "permanent allegiance" in Section 101 (b) (8 U. S. C. 501 (b)) of the 1940 Nationality Act, for that provision originated in the nationality code proposed by the State, Labor and Justice Departments and was characterized as follows in the explanatory report submitted to the Congress (Hearings, *ibid.*, p. 412):

> The nationals of a state owe permanent allegiance to the state or the personal sovereign thereof, as distinguished from the obligation of aliens temporarily residing or sojourning in the territory of the state, sometimes called "temporary allegiance," to obey the laws (*Carlisle* v. *United States*, 16 Wall. 147). The word "permanent" in this connection means continuous, or of a lasting nature, as distinguished from "temporary," but it does not connote an indissoluble relationship. *Thus, the "permanent allegiance" owed to the United States by Philippine citizens may continue un-*

> *til terminated at the end of the 10-year period prescribed in the act of Congress of March 24, 1934.* It was permanent allegiance which was referred to by Justice Iredell, in *Talbot* v. *Jansen,* 1795, 3 Dall. 133, 164, when he said:
>
> "By allegiance I mean the tie by which a citizen of the United States is bound as a member of the society."[13] [Emphasis added.]

And, while persons in petitioner's position were liable for American military service during World War II, the same result would have followed if the Philippine Islands were then independent, for such persons would then have been allied aliens. With the independence of the Philippine Islands, petitioner, as a citizen of the Philippines, owes "permanent" allegiance to the Republic of the Philippines, rather than to the United States; he must look to the Republic of the Philippines, rather than to the United States, for passports and diplomatic protection abroad (*Cabebe* v. *Acheson,* 183 F. 2d 795 (C. A. 9)); and his liability for military service in this country is no different from that of other aliens. 50 U. S. C. App. 454 (a).

B. In any event, Congress could modify the status of citizens of the Philippine Islands as nationals of the United States as an incident to providing national independence for the Philippines.

However, it is not necessary to decide here what petitioner's rights as a non-citizen national would be if the Philippine Islands remained under the control

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[13] For use of this report in interpreting the 1940 Act, see *Savorgnan* v. *United States,* 338 U. S. 491, 505.

of the United States for an indefinite future. It should be decisive in this case that petitioner was subjected to deportation and other incidents of the immigration laws by Sections 8 (a) and 14 of the Philippine Independence Act, as part of a major, decisive step toward complete national independence for the Philippine Islands. It will hardly be contended that the United States was without power to provide for Philippine independence. *Hooven & Allison Co.* v. *Evatt, supra.* That case upheld the validity of significant changes in the previously existing trade relationships between the Philippines and this country, changes which were an important part of the transition of the Philippine Islands toward independence.

The precise nature of the transition which began with the 1934 Act was described by this Court in *Hooven & Allison Co.* v. *Evatt, supra,* at 675–678, as follows:

> The Act of 1934 made special provisions for the relations between the two governments pending the final withdrawal of sovereignty of the United States from the Philippines and in particular provided for a limit on the number and amount of articles produced or manufactured in the Philippine Islands that might be "exported" to the United States free of duty. § 6. It provided for the complete withdrawal and surrender of all right of possession, supervision, jurisdiction, control or sovereignty of the United States over the Philippines on the 4th of July following the expiration of ten years from the date of the inauguration of the new government, organized under the Constitu-

tion provided for by the Independence Act. § 10 (a). The new Philippine Constitution was adopted on February 8, 1935, and the new government under it was inaugurated on November 14, 1935. * * * *Thus, by the organization of the new Philippine government under the constitution of 1935, the Islands have been given, in many aspects, the status of an independent government, which has been reflected in its relations as such with the outside world.*

* * * * *

The Independence Act, while it did not render the Philippines foreign territory, * * *treats the Philippines as a foreign country for certain purposes.* * * *[I]t established immigration quotas for Filipinos coming to the United States, as if the Philippines were a separate country, and in that connection extended to Filipinos the immigration laws relating to the exclusion or expulsion of aliens. It also provided* * * *that citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For purposes of 8 U. S. C. §§ 154 and 156, relating to deportation, the Philippine Islands are declared to be a foreign country.* * * * Foreign service officers of the United States may be assigned to the Philippines, and are to be considered as stationed in a foreign country. * * * And the Independence Act, § 6 48 Stat. 456, 460, provides that "when used in this section in a geographical sense, the term 'United States' includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and island of Guam." As we have

> said, the Philippines have frequently dealt with other countries as a sovereignty distinct from the United States. [Emphasis added.]

See also, *Cincinnati Soap Co.* v. *United States,* 301 U. S. 308, 319–320, 322–324.

Incident to that same intricate adjustment, Congress clearly had the power, as this Court recognized in the portion of the *Hooven & Allison* opinion quoted above, to change the status as non-citizen nationals of the United States of citizens of the Philippine Islands residing both there and in this country. This power was as broad as the power of Congress to determine initially, following the Treaty of Paris, the status of the inhabitants of the Philippines. The exercise of that power in Sections 8 (a) and 14 of the 1934 Act reflected both the greater autonomy conferred immediately upon the Philippine Islands and the certainty that within a few years the Philippines would be a completely independent state exacting primary and "permanent" allegiance from its own citizens. Under these circumstances, Congress clearly had the power to take steps to eliminate the problems of dual nationality which would arise if citizens of the Philippine Islands became citizens of their own independent national state while retaining their old status as non-citizen nationals of the United States.

Moreover, these arrangements with respect to a territory and a people preparing for complete independence were not only an exercise of the power of Congress under Article 4, Section 3 of the Constitution to "dispose of * * * territory * * *, belong-

ing to the United States," but constituted the basis for our relations with the future Republic of the Philippines. These matters, if not political questions, obviously required that Congress be able to exercise in 1934 the same broad and flexible powers that it admittedly had in initially determining the status of the Philippine Islands and their inhabitants. Indeed, the decisions of this Court which recognized that Congress must be able to utilize a variety of solutions in defining the status of Indians and Indian tribes, *United States* v. *Nice,* 241 U. S. 591, 598, support, *a fortiori,* an equally plenary power in defining the relationship to the United States of persons who are about to become citizens of an independent foreign state. See also *Harisiades* v. *Shaughnessy,* 342 U. S. 580, 588–591.

It should be emphasized that there is here involved no question of the power of Congress to provide for the termination of the non-citizen nationality of persons who thereby will be rendered stateless.[14] Petitioner and every other person who became by birth a citizen of the Philippine Islands became citizens of the Republic of the Philippines under Art. IV, Sec. 1, Constitution of the Philippines, 30 Phil. Pub. Laws 373, regardless of whether such persons had remained in the Philippines or came to the United States.

Similarly, there is not involved here any constitutionally protected right of petitioner to elect to retain his status as a non-citizen national of the United

[14] Even if such an effect were to result, we submit that it would not preclude congressional power (see the Government's briefs in *Perez* v. *Brownell* and *Trop* v. *Dulles*, Nos. 572 and 710, this Term), but, in any event, the question is not present in this case.

States. American courts, in situations not controlled by a statute or treaty of the United States, have sometimes recognized and applied an international practice of allowing citizens of ceded or conquered territory, who are residing elsewhere, to elect whether to assume the nationality of the new sovereign of such territory. See, for example, *United States ex rel. Schwarzkopf* v. *Uhl*, 137 F. 2d 898 (C. A. 2). The applicability of any such practice to the peaceful separation of the Philippines from this country is highly doubtful. Petitioner clearly could not compel the United States to accept him as a citizen, so that any election would be between Philippine citizenship and a continuation of his nebulous status as a non-citizen national of the United States. When, on July 4, 1946, the Republic of the Philippines became an independent state, petitioner became a citizen of a foreign country to which he owes the permanent allegiance which was previously due to the United States, and to which he must look for diplomatic protection. At this point, without more, his status as a non-citizen national, which had theretofore distinguished him from aliens generally, terminated. In any event, when Congress by the Act of July 2, 1946 (60 Stat. 416) made "Filipino persons" eligible for naturalization as American citizens, it in effect provided, simultaneously with petitioner's loss of his status as a non-citizen national, that persons in his position (who do not by their own acts render themselves ineligible) could elect between remaining citizens of the Republic of the Philippines or becoming citizens of the United States. *Application of Viloria,*

84 F. Supp. 584 (D. Hawaii); and see Note, 50 Col. L. R. 371 (1950).

C. In Sections 8 (a) and 14 of the Philippine Independence Act of 1934, Congress has made citizens of the Philippine Islands, regardless of when they came to this country, subject to deportation for acts committed after May 1, 1934.

We have shown that by 1934 there was no doubt as to the power of Congress to modify the status of citizens of the Philippine Islands as non-citizen nationals of the United States, particularly as an incident to the transition of the Philippine Islands to complete national independence. Thus, there is no justification for reading Sections 8 (a) and 14 of the Philippine Independence Act otherwise than according to their plain meaning, or so as to produce absurd results, in order to avoid possible constitutional questions.

As we have seen, petitioner was ordered deported from the United States pursuant to the Act of February 18, 1931, on the ground that he has been convicted of a narcotics violation. The conviction in question occurred in 1951. See p. 8, *supra*. If petitioner's status was that of an alien at the time of conviction, the deportation provision applied.

1. Since the period from 1934 to 1946 has no direct relevancy to the problems of this case, the immediate effect of Section 8 (a) of the Philippine Independence Act—which declared that even from the time the Act became effective in 1934, and before full independence, citizens of the Islands who were not citizens of the United States should be treated as

aliens for the purposes of the immigration laws—need not be decided here. However, Section 8 (a) gives added weight to the legislative intent behind Section 14 of the Act. Even without Section 14, which became effective in 1946, if such national was deportable as an alien from 1934 to 1946 under Section 8 (a), he obviously did not cease to be such when the Republic of the Philippines became an independent nation in 1946. If, as we contend, Section 8 (a), which became effective May 1, 1934, made petitioner an alien from that date on for deportation purposes, it follows *a fortiori* that such was his status in 1951, subsequent to full independence.

Section 8 (a) (1), which with Sections 6, 7 and 9 appears under the heading "Relations With The United States Pending Complete Independence" (48 Stat. 459–463), provides in pertinent part that

> SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—
>
> (1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. * * *

It is clearly provided that "For the purposes of the Immigration Act of 1917, * * * and all other laws of the United States relating to the * * * expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens." There is not the slightest suggestion in the quoted language that it is not to apply to such persons who are residing in the United States. See *Gonzales* v. *Barber*, 207 F. 2d 398, affirmed on other grounds, 347 U. S. 637, where the court below wrote, at p. 401:

> The Immigration Act of 1917 was one of the statutes specifically envisioned by Congress in providing that for its purposes Filipinos "shall be considered as if they were aliens." Since both convictions occurred after the effective date of the Philippine Independence Act of 1934, Gonzales is properly subject to deportation * * * if he is otherwise subject to its terms.

See also *Mangaoang* v. *Boyd*, 205 F. 2d 553, 556 (C. A. 9), certiorari denied, 346 U. S. 876. The contemporaneous and repeated administrative construction of Section 8 (a) (1) applied it to citizens of the Philippines residing in the United States.[14]

2. Any doubts as to the effect of the Philippine In-

[14] See Pet. Br. 24 and Pet. Reply Brief pp. 24–28, *Barber* v. *Gonzales*, No. 431, O. T. 1953. Since one of the two convictions which formed the basis for the deportation order in *Gonzales* occurred in 1941, subsequent to passage of the Philippine Independence Act but prior to the effective date of Section 14, the effect of Section 8 (a) on respondent's status was more fully discussed in the Government's briefs in that case.

dependence Act on Filipinos residing in the United States is, however, resolved by reference to Section 14 of the Act which, as noted *supra* at p. 29 became effective in 1946 and is controlling here. This section provided:

> SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

Applying without qualification to "persons who were born in the Philippine Islands," Section 14 required that petitioner continue to be treated as an alien for deportation purposes after the Philippines became independent on July 4, 1946. On that date, the entire rationale of *Gonzales* v. *Williams*, 192 U. S. 1, *supra*, p. 33, disappeared and, without more, petitioner ceased to be a national of the United States and became an alien in relation to the United States for all purposes.

CONCLUSION

It is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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